

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8161 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAJESH ALIAS MUNNO KRUSHNALAL

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 13th September, 1998, made by the

Commissioner of Police, Vadodara City, under the powers conferred upon him under sub-section (2) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are held to be prejudicial to the maintenance of public order within the meaning of section 3 (4) of the Act. The Detaining Authority has relied upon four offences punishable under Bombay Prohibition Act registered against the petitioner, out of which, three are pending trial, and one is pending investigation. In each of the said cases, substantial quantity of country liquor was recovered from the possession of the petitioner. Besides, two witnesses have given statements in respect of the bootlegging activities of the petitioner and its adverse effect on public tranquility and even tempo of life.

The only ground on which the impugned order has been assailed is, in the above referred offences registered against the petitioner, the police had taken the samples of the liquor recovered from the petitioner and sent to the Forensic Science Laboratory for chemical examination. Under the representation dated 14th October, 1998, made by the learned advocate for the petitioner addressed to the Home Minister, the petitioner had demanded FSL report in support of the alleged liquor recovered from the petitioner and the offences pending investigation. However the reports of the Forensic Science Laboratory in respect of the said samples have not been furnished to the petitioner. Thereby the petitioner's right to make an effective representation has been infringed. The averment is not contested. It is urged that the Detaining Authority while making the order of detention had not relied upon the reports of the Forensic Science Laboratory and, therefore, the same are not supplied to the petitioner. In the matter of RANVIRSINH KALYANSINH (SCA NO. 7490/98, decided on 12th JULY 1999) I have taken a view that whether the Detaining Authority relies upon it or not, the report of the Forensic Science Laboratory/Chemical Analyst is a vital document, without which the detenu may not be able to make any effective representation. It is, therefore, imperative for the Detaining Authority to furnish a copy of the said report to the detenu except in cases where such reports are not yet received or not prepared. In the present case, it is not the case of the Detaining

Authority that on the date of detention, such reports were yet not available. The petitioner's right to make an effective representation having thus been infringed, the continued detention of the petitioner is invalid and unlawful.

Petition is, therefore, allowed. The impugned order dated 13th September, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI